

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

GREGORY W. ROBINSON,)	
)	
Claimant,)	IC 2003-013319
v.)	
)	
FRAZIER INDUSTRIAL COMPANY,)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
Employer,)	AND RECOMMENDATION
and)	
)	
HARTFORD UNDERWRITERS INSURANCE,)	
)	FILED AUG 21 2008
Surety,)	
and)	
)	
STATE OF IDAHO, INDUSTRIAL)	
SPECIAL INDEMNITY FUND,)	
)	
Defendants.)	
)	

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Commission assigned this matter to Referee Douglas A. Donohue. He conducted a hearing in Pocatello on September 20, 2007. Thomas W. Clark represented Claimant. Thomas V. Munson represented Employer and Surety. Anthony M. Valdez represented State of Idaho, Industrial Special Indemnity Fund ("ISIF"). The parties presented oral and documentary evidence. They took post-hearing depositions and submitted briefs. The case came under advisement on February 12, 2008. It is now ready for decision.

ISSUES

The Notice of Hearing issues were reduced by agreement of the parties to the following:

1. Whether the condition for which Claimant seeks benefits was caused by the alleged industrial accident;

RECOMMENDATION - 1

2. Whether apportionment for a preexisting condition pursuant to Idaho Code § 72-406 is appropriate;
3. Whether and to what extent Claimant is entitled to benefits for:
 - a) Temporary total or partial disability (TTD or TPD),
 - b) Permanent partial impairment (PPI),
 - c) Permanent disability,
 - d) Medical care, and
 - e) Attorney fees;
4. Whether Claimant is entitled to total permanent disability pursuant to the odd-lot doctrine;
5. Whether ISIF is liable under Idaho Code § 72-332; and
6. Apportionment under the Carey formula.

The parties agreed the issue of retraining benefits should be withdrawn.

CONTENTIONS OF THE PARTIES

Claimant contends he injured his right wrist and neck, requiring surgery on both areas, when he jerked a heavy box of welded products. Apportionment under Idaho Code § 72-406 is inappropriate despite the fact that Claimant had undergone prior neck surgery. He is entitled to unpaid medical care benefits for treatment to his neck, and for temporary and permanent income benefits. He is totally and permanently disabled as an odd-lot worker. If apportionment is deemed appropriate, ISIF is liable for its share of Claimant's total permanent disability pro-rated at 31.6%. Employer and Surety are responsible for attorney fees for unreasonable denial of benefits related to Claimant's neck injury.

Employer and Surety contend Claimant's neck problems are entirely the result of degenerative progression of a preexisting condition. All benefits should be calculated based upon the wrist injury only. They have paid appropriate TTD and PPI benefits. If Claimant's neck problem is deemed to be caused by the accident, apportionment under Idaho Code § 72-406

is appropriate. Claimant is not totally and permanently disabled by any reasonable analysis. Defendants acted reasonably at all times, and attorney fees under Idaho Code § 72-804 are not appropriate.

ISIF contends Claimant is not totally and permanently disabled under any analysis. *Arguendo*, even if he is he does not meet the Idaho Code § 72-332 prerequisites for ISIF liability.

EVIDENCE CONSIDERED

The record in the instant case consists of:

1. Oral testimony at hearing of Claimant, Claimant's wife Mary, brother in-law E. Merle Guyton, and former co-worker and supervisor Rod Bair;
2. Employer and Surety Exhibits A – Z (including K1), and AA – EE;
3. Claimant Exhibits FF – KK;
4. ISIF Exhibits A – Z; and
5. The posthearing depositions of treating neurosurgeon Scott Huneycutt, M.D., orthopedic surgeon Richard Knoebel, M.D., and vocational experts William Jordan and Mary Barros-Bailey.

All objections raised in depositions are overruled. After having fully considered all of the above evidence, the Referee submits the following findings of fact and conclusions of law for review by the Commission.

FINDINGS OF FACT

1. Claimant worked as a welder for Employer. He began work on September 29, 2003. On October 21, 2003, he attempted to reposition a bin of welded parts. He jerked the bin with his right hand and injured his right wrist. He notified Employer but continued to work. The pain increased, and Claimant sought medical attention on October 24, 2003.

2. All references in the record to an injury date of October 24, 2003, refer to the accident which actually occurred on October 21, 2003.

3. On October 24, 2003, Claimant presented for treatment at Portneuf Medical Center. He reported wrist and forearm pain from the industrial accident. The early diagnosis was traumatic tendonitis. He was given a wrist splint to wear. No neck symptoms are recorded for that visit. He returned to light-duty work with lifting restrictions.

4. On October 28, 2003, Claimant attended a follow-up visit by John Jones, M.D. Neck problems were noted as "Past Medical History" and not as "Chief Complaint" or "Present Illness." Restrictions were eased somewhat, but largely remained in place.

5. Claimant attended physical therapy sessions for his wrist. These notes do not indicate any neck complaints. As late as Claimant's last physical therapy visit on November 24, 2003, the physical therapist had not recorded any complaint of neck pain.

6. When Claimant did not improve, greater restrictions were imposed on November 3, 2003. On November 10, 2003, Claimant was worse and reported that Employer's light-duty job had worked him in excess of restrictions. Dr. Jones telephoned Employer about complying with restrictions. On the November 17, 2003 visit, Claimant's symptoms had improved. Surety had made an appointment with Richard Wathne, M.D., but Dr. Jones cancelled it. On November 24, Dr. Jones found Claimant's symptoms had resolved. Dr. Jones was prepared to release him to full-duty work without restrictions but first wanted a physical therapy evaluation. The therapist found scaphoid dislocation. Dr. Jones referred Claimant to Dr. Wathne.

7. Dr. Wathne first saw Claimant on December 4, 2003. He examined and treated Claimant's wrist. As part of his general physical examination on December 19 Dr. Wathne noted, "Neck is supple and non-tender with no masses."

8. On December 19, 2003, Dr. Wathne surgically pinned the wrist to allow the

ligaments to strengthen.

9. Dr. Wathne released Claimant to light-duty work on January 27, 2004. An MRI on that date reported a history of “chronic pain radiating to the left arm.” It showed Claimant’s scoliosis, congenital malformations of C4-5-6, C3-4 listhesis, and mild to moderate stenosis. It did not show any recent disc bulge or other acute trauma. This is also the date Claimant first mentioned his intention to treat with Dr. Huneycutt outside the chain of referral. Although about three months after the accident, Claimant was for the first time asserting that the neck pain had been present since the date of accident.

10. On January 28, 2004, Claimant visited Scott Huneycutt, M.D., on his own initiative, outside the chain of referral. (Claimant had treated with Dr. Huneycutt for his neck condition in September 2002.) By history, Claimant reported he had been pain free from 2002 until the accident in October 2003, at which time his neck symptoms dramatically increased. Dr. Huneycutt opined Claimant’s complaints of neck pain arising since the October accident were likely related to that accident. He referred Claimant to physiatrist Eric Roberts, M.D.

11. On February 5, 2004, Claimant visited Dr. Roberts for the first time. The history Claimant provided Dr. Roberts described feeling neck and back pain immediately after the accident which Claimant alleged he concealed from Employer and his doctors for a time. Dr. Roberts restricted Claimant from all work. Eventually, Dr. Roberts rated Claimant’s neck condition at 21% PPI of the whole person.

12. On February 25, 2004, as part of a general physical examination in conjunction with follow-up examination of Claimant’s wrist, Dr. Wathne noted, “Neck is supple and non-tender with no masses.” Dr. Wathne surgically removed the hardware that day.

13. On March 24, 2004, Claimant was evaluated at Surety’s request by

Richard Knoebel, M.D. Dr. Knoebel opined Claimant's wrist condition was industrially related and not yet at maximum medical improvement (MMI), but that Claimant's neck condition was unrelated to the industrial accident.

14. Dr. Wathne opined Claimant's wrist was medically stable as of May 20, 2004. Based upon his assessment of Claimant's wrist only, he opined Claimant could return to welding duties with some modification of lifting with the right hand and no lifting over 50 pounds. He would not approve the job site evaluation (JSE) as submitted. He rated Claimant's PPI for the wrist at 15% of the right upper extremity.

15. On January 14, 2005, another MRI showed scoliosis, congenital deformities at C4-5-6, spondylosis, degeneration and mild disc bulges throughout the cervical spine, but none of which impacted the spinal cord or nerve roots or showed evidence of acute injury.

16. On February 10, 2005, Dr. Huneycutt operated on Claimant's neck. He removed the C3-4 disc and fused the vertebrae. Dr. Huneycutt's operative report describes a degenerative, not acute, condition in Claimant's neck.

17. On March 28, 2005, Dr. Roberts opined Claimant's neck was medically stable.

18. On June 2, 2005, Dr. Roberts evaluated Claimant to assign PPI. He opined Claimant suffered 21% whole person PPI for his neck condition. Dr. Roberts opined this was entirely related to the October 2003 accident, having subtracted out the "10%" [sic] preexisting cervical spine PPI from "1987" [sic]. He concurred with Dr. Wathne's assessment of Claimant's wrist and converted the 15% upper extremity PPI to 9% whole person. He opined Claimant could perform only sedentary work. He identified restrictions, including Claimant's self-imposed restriction of lying down two hours in the middle of every day.

19. Dr. Knoebel reevaluated Claimant on July 6, 2006. He opined Claimant's wrist

was medically stable and concurred with Dr. Wathne's opinion that it became stable on May 20, 2004. Dr. Knoebel agreed PPI of the wrist to be 15% of the right upper extremity. He did consider a 25% PPI of the whole person to be more appropriate for the neck condition. Dr. Knoebel opined Claimant's neck condition was an expected progression of a preexisting condition without evidence of trauma or acute injury. He opined Claimant's neck condition was entirely unrelated to the industrial accident. He opined the 2002 and 2004 MRIs did not show any change suggestive of trauma or acute injury. He noted Claimant's reports of neck pain arose at the time Claimant refused Employer's offer of light-duty work.

20. Dr. Huneycutt opined Claimant's neck condition and need for additional surgery was caused by the accident. He opined the 2002 and 2004 MRIs showed a change involving a new disc protrusion at C3-4.

Prior Medical Conditions

21. Claimant has congenital dorsal scoliosis. This results in occasional pain between his shoulder blades. Claimant denied it ever hindered his ability to work.

22. In 1988, Claimant visited Darth West, D.C., for an industrial low back injury. This healed without impairment or residual symptoms.

23. In 1989, Claimant made an industrial claim for symptoms in his right forearm. Initially diagnosed as carpal tunnel syndrome, an MRI revealed congenital abnormalities of his cervical spine at C4-5-6 with scoliosis and a disc herniation at C6-7. The claim was accepted. Cervical spine surgery, removal of the C6-7 disc, was required. He was awarded PPI of 12% of the whole person.

24. In 1999, Claimant sought treatment for a flare-up of his neck pain with radiating symptoms. An MRI showed scoliosis, congenital fusing of the C4-5-6 vertebrae, degenerative

disease, and stenosis. Dr. Blair recommended a series of epidural steroid shots.

25. Claimant requested treatment in December 2000 for low back pain complaints. He attributed these to an industrial injury on November 10, 2000. The records show Claimant underwent a few days of physical therapy for a lumbar strain and was placed on temporary work restrictions. At hearing, Claimant denied it ever hindered his ability to work.

26. On September 24, 2002, Claimant underwent an MRI of his neck. It showed the previous surgery and a continuing degenerative condition. X-rays of the same date showed scoliosis, degeneration, osteoporosis, spondylosis, and a congenital fusion of C4-5-6.

27. Over the years, Claimant infrequently sought chiropractic treatment from H. Dewain Lee, D.C. The first note is for February 1997. The last note before the October 2003 accident occurred in September 2003. Claimant reported neck symptoms on visits in February and March of 1997, in March, September, and November of 1998, in September 2000, in September 2001, and in April 2003.

28. Between the accident and January 27, 2003, the record shows Claimant made three mentions of neck pain, one to Dr. Jones, one to Sarah Brown, and one to the adjustor Janis Smith. In each of these three mentions, context indicates Claimant consistently referred to this neck pain as a prior condition related to his history or general health, but unrelated to the industrial accident of October 21, 2003.

Vocational and Disability Factors

29. Claimant was born January 5, 1958. He completed ninth grade but did not finish high school and has not obtained a GED. Through his work he has obtained various welding certifications.

30. Claimant's time-of-injury wage was \$10.45 per hour.

31. Claimant has generally worked in welding and construction. He has performed some heavy equipment operation but has no certifications. He has performed supervisory work, supervising both small and large crews.

32. Claimant is a pleasant and personable individual who could make a good first impression in a job interview. Claimant does not display significant disfigurement of a type that might impact his ability to obtain or keep a job.

33. ICRD consultant Sarah Brown began providing Claimant services on December 5, 2003. On December 16, 2003, Ms. Brown identified light-duty work available to Claimant through Employer. On that date, Claimant reported to Ms. Brown that he was considering applying for Social Security disability because of the wrist injury and because of “his overall health.”

34. On January 27, 2004, Ms. Brown discussed with Claimant the availability of light-duty work. That date also reflects Ms. Brown’s first note that Claimant told her about having neck pain.

35. Ms. Brown performed a labor market survey, but did not actively assist Claimant in obtaining employment after he refused the light-duty job offered by Employer. Ms. Brown identified a few specific part-time jobs which she opined Claimant could perform.

36. Claimant filed for Social Security disability benefits on January 28, 2004.

37. Claimant refused Employer’s offer of suitable light-duty work on January 30, 2004.

38. IDVR consultant Wesley VanVooren assisted Claimant. No specific retraining program began to be implemented.

39. Claimant underwent two functional capacity evaluations (FCE), one on May 10,

2005 and one on October 10, 2006.

40. The May 10, 2005 FCE was performed by physical therapist Ric Benedetti. Mr. Benedetti opined Claimant could work at a sedentary job.

41. The October 10, 2006 FCE was performed by physical therapist Scott Billing. Mr. Billing concluded Claimant was capable of working an 8-hour day at light-medium duty, with certain positional restrictions.

42. Upon receipt of the 2006 FCE, Dr. Knoebel revised his opinions and reduced Claimant's restrictions. He opined Claimant could not return to the heavy work of a welder, but could perform light-medium work.

43. Vocational expert Mary Barros-Bailey, Ph.D., evaluated Claimant on August 6, 2007. Her report is dated September 4, 2007. Considering the 2006 FCE and Dr. Knoebel's addendum to his report, she opined Claimant's permanent disability is at least 57%, more reasonably 61%, of the whole person, inclusive of impairment. The small number of jobs potentially available under that scenario would likely pay at or within one dollar per hour of his time-of-injury wage. She opined that applying most combinations of FCE results and doctors' restrictions, Claimant is likely totally and permanently disabled.

44. Vocational expert William Jordan opined Claimant is employable. He opined Claimant's disability relating to his wrist at 20% of the whole person, inclusive of PPI. Including the neck condition as well and using Dr. Roberts' restrictions, he opined a 67% disability rating, inclusive. Using Dr. Knoebel's, disability would be 59%, inclusive, before apportionment for the prior neck PPI rating.

Discussion and Further Findings

45. **Credibility.** At hearing, Claimant's demeanor was credible. Moreover,

his report of neck pain at hearing was consistent with his posture and presentation. Without a watch or prompt, he stood every 20-30 minutes during the hearing to relieve discomfort. However, his recollection of the onset, nature, and intensity of his neck pain was undercut by medical records which showed denials of neck pain or which failed to record any complaints of neck pain reasonably soon after the accident.

46. **Causation and apportionment.** A claimant must prove his condition was caused, more likely than not, by his work in order to be eligible for any benefits under the Idaho Workers' Compensation Law. Seamans v. Maaco Auto Painting, 128 Idaho 747, 918 P.2d 1192 (1996). Proof of a possible causal link is not sufficient to satisfy this burden. Beardsley v. Idaho Forest Industries, 127 Idaho 404, 901 P.2d 511 (1995). A claimant must provide medical testimony that supports a claim for compensation to a reasonable degree of medical probability. Langley v. ISIF, 126 Idaho 781, 890 P.2d 732 (1995).

47. Diagnostic studies do not support a finding of acute injury. Doctors' opinions which causally relate his neck symptoms to the industrial accident rely upon Claimant's reconstructed description and history. Early examinations report wrist, but not neck symptoms relatable to the accident.

48. Dr. Huneycutt's and Dr. Roberts' expert opinions largely rely upon Claimant's report that the neck pain began just after the accident. Dr. Knoebel's expert opinions are based largely upon the following: (1) medical records in which Claimant is reported as having denied neck pain just after the accident, (2) records which show neck pain arose several weeks later, and (3) records which show a significant history of intermittent neck pain for a degenerative condition which required prior surgery. Thus, Dr. Knoebel's opinions are more reliably based on evidence generated contemporaneous to the events. Claimant's revised memory, beginning

January 27, 2004, is not persuasive.

49. Claimant failed to show he injured or aggravated his neck condition as a result of the October 21, 2003 industrial accident.

50. The parties do not dispute Claimant's wrist injury was caused by the October 21, 2003 industrial accident.

51. **TTDs.** If Employer made a reasonable, actual offer of suitable employment which was refused by Claimant, Employer is not liable for TTD benefits beyond the date of refusal. Malueg v. Pierson Enterprises, 111 Idaho 789, 727 P.2d 1217 (1986). Claimant is entitled to the undisputed TTD benefits up to and including January 29, 2004. Claimant refused suitable work on January 30, 2004 and is not entitled to benefits thereafter.

52. **Medical Care.** An employer is required to provide reasonable medical care. Idaho Code § 72-432(1). Here, Employer did so. Drs. Jones and Wathne and others provided care and treatment to Claimant's wrist. Only after Claimant had decided to apply for Social Security disability did he suddenly remember that his neck had been hurting since the accident and then seek neck treatment outside the authorized chain of referral. Claimant did not obtain approval for this treatment by any of the recognized methods: (1) referral from a doctor in the chain of referral, (2) approval of Surety, or (3) petition to the Commission for change of physician. Moreover, Drs. Huneycutt and Roberts treated, almost exclusively, Claimant's neck. Claimant gave a history to them which was inconsistent with the history he had previously provided his authorized physicians.

53. Employer and Surety are liable for medical care benefits provided within the chain of referral through May 20, 2004, inclusive. This was the date Dr. Wathne declared Claimant's wrist medically stable. Employer and Surety are not liable for medical care provided

or ordered by Drs. Huneycutt and Roberts. Employer and Surety are not liable for medical care provided to diagnose and treat Claimant's preexisting neck condition.

54. **PPI.** "Permanent impairment" is defined by statute. Idaho Code §§ 72-422, -224. When determining impairment, the opinions of physicians are advisory only. The Commission is the ultimate evaluator of impairment. Urry v. Walker & Fox Masonry, 115 Idaho 750, 769 P.2d 1122 (1989); Thom v. Callahan, 97 Idaho 151, 540 P.2d 1330 (1975).

55. Claimant suffered an undisputed 9% whole person PPI as a result of the accident. His neck condition is unrelated. He suffered no additional compensable PPI.

56. **Permanent disability and apportionment.** Permanent disability and its evaluation are defined by statute. Idaho Code §§ 72-423, -425, -430. There are two methods by which a claimant can demonstrate he is totally and permanently disabled. First, a claimant may prove a total and permanent disability if his medical impairment together with the pertinent nonmedical factors totals 100%. If a claimant has met this burden, then total and permanent disability has been established. If, however, a claimant has proven something less than 100% disability, he can still demonstrate total disability by fitting within the definition of an odd-lot worker. Boley v. ISIF, 130 Idaho 278, 939 P.2d 854 (1997).

57. Here, Claimant failed to show that, more likely than not, he is 100% disabled. The weight of credible medical expert opinion identifies restrictions which would allow Claimant to work. Reasonable vocational expert opinions, when considering the same restrictions, are consistent. Considering especially the medical restrictions and vocational factors recited above with all other medical and non-medical factors, Claimant suffered a 60% disability.

58. Claimant's neck condition was rated for PPI by various physicians. However, this condition was unrelated to the accident, so Commission evaluation of such PPI is unnecessary.

59. The record shows Claimant suffered no disability as a result of his neck condition prior to the accident. After the accident, physicians suggested restrictions relating to Claimant's neck condition. To the extent these restrictions were based upon objective findings, they are redundant to restrictions imposed as a result of Claimant's wrist condition. To the extent restrictions were based upon subjective complaints of Claimant, they are unpersuasive. In either event, they do not provide a basis for apportionment of permanent disability under Idaho Code § 72-406.

60. **Odd-lot disability.** A claimant may satisfy his burden of proof and establish odd-lot disability by showing that he has attempted other types of employment without success, by showing that he or vocational counselors or employment agencies on his behalf have searched for other work and other work is not available, or by showing that any efforts to find suitable work would be futile. Boley, *supra*.

61. Claimant went back to work after the accident. It was not until he contemplated applying for Social Security disability benefits that he decided he was unable to work at all and refused Employer's offer of light-duty work. It is Claimant's conviction that he is disabled, together with his Social Security disability status, which discourages him from making a genuine effort to find a job. Claimant failed to show he made a reasonable job search or that he cooperated with the efforts of Ms. Brown or Mr. VanVooren. Claimant failed to show that conducting a reasonable job search would be futile. Claimant failed to show he qualifies as an odd-lot worker.

62. **ISIF liability and Carey apportionment.** Since Claimant is not totally and permanently disabled by any method of analysis, ISIF is not liable, and Carey apportionment is moot.

63. **Attorney fees.** Attorney fees shall be awarded where the Commission finds the conditions of Idaho Code § 72-804 are satisfied. Bradley v. Washington Group International, 141 Idaho 655, 115 P.3d 746 (2005). Here, Defendants acted reasonably at all times. The adjuster's diary narratives, although they contain large amounts hearsay which are not received for the truth of the events noted, do show Surety's contemporaneous impressions and understanding of the unfolding of Claimant's situation. These, together with the other evidence of record, show Defendants acted reasonably at all times. There exists no basis for the imposition of an award of attorney fees under Idaho Code § 72-804.

CONCLUSIONS OF LAW

1. Claimant suffered an injury to his right wrist in a compensable accident on October 21, 2003. The accident did not cause an injury or an aggravation to a preexisting cervical spine condition;

2. Claimant is entitled to appropriate temporary disability benefits through January 29, 2004. He is not entitled to TTD benefits thereafter because he refused suitable work actually offered by Employer on January 30, 2004;

3. Claimant is entitled to medical care benefits for diagnosis and treatment by physicians within the chain of referral from the date of the accident through May 20, 2004, inclusive. Claimant is not entitled to medical care benefits for diagnosis and treatment of his unrelated neck condition. Claimant is not entitled to medical care benefits for diagnosis and treatment provided or ordered by Drs. Huneycutt and Roberts;

4. Claimant showed he is entitled to PPI for his wrist. The amount was undisputed and has been paid by Surety.

5. Because Claimant's neck condition is unrelated to the accident, there is no basis for awarding additional PPI;

6. Claimant failed to show he is totally and permanently disabled. Claimant showed that he is entitled to disability rated at 60% of the whole person inclusive of PPI, without apportionment;

7. ISIF bears no liability as a result of the accident; and

8. Claimant failed to show that attorney fees are awardable under Idaho Code § 72-804.

RECOMMENDATION

The Referee recommends that the Commission adopt the foregoing findings of fact and conclusions of law and issue an appropriate final order.

DATED this 4TH day of August, 2008.

INDUSTRIAL COMMISSION

/S/_____
Douglas A. Donohue, Referee

ATTEST:

/S/_____
Assistant Commission Secretary

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BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

GREGORY W. ROBINSON,)	
)	
Claimant,)	IC 2003-013319
v.)	
)	
FRAZIER INDUSTRIAL COMPANY,)	ORDER
)	
Employer,)	
and)	
)	FILED AUG 21 2008
HARTFORD UNDERWRITERS INSURANCE,)	
)	
Surety,)	
and)	
)	
STATE OF IDAHO, INDUSTRIAL)	
SPECIAL INDEMNITY FUND,)	
)	
Defendants.)	
_____)	

Pursuant to Idaho Code § 72-717, Referee Douglas A. Donohue submitted the record in the above-entitled matter, together with his recommended findings of fact and conclusions of law to the members of the Idaho Industrial Commission for their review. Each of the undersigned Commissioners has reviewed the record and the recommendations of the Referee. The Commission concurs with these recommendations. Therefore, the Commission approves, confirms, and adopts the Referee's proposed findings of fact and conclusions of law as its own.

Based upon the foregoing reasons, IT IS HEREBY ORDERED that:

ORDER - 1

1. Claimant suffered an injury to his right wrist in a compensable accident on October 21, 2003. The accident did not cause an injury or an aggravation to a preexisting cervical spine condition.

2. Claimant is entitled to appropriate temporary disability benefits through January 29, 2004. He is not entitled to TTD benefits thereafter because he refused suitable work actually offered by Employer on January 30, 2004.

3. Claimant is entitled to medical care benefits for diagnosis and treatment by physicians within the chain of referral from the date of the accident through May 20, 2004, inclusive. Claimant is not entitled to medical care benefits for diagnosis and treatment of his unrelated neck condition. Claimant is not entitled to medical care benefits for diagnosis and treatment provided or ordered by Drs. Huneycutt and Roberts.

4. Claimant showed he is entitled to PPI for his wrist. The amount was undisputed and has been paid by Surety.

5. Because Claimant's neck condition is unrelated to the accident, there is no basis for awarding additional PPI.

6. Claimant failed to show he is totally and permanently disabled. Claimant showed that he is entitled to disability rated at 60% of the whole person inclusive of PPI, without apportionment.

7. The Industrial Special Indemnity Fund (ISIF) bears no liability as a result of the accident.

8. Claimant failed to show that attorney fees are awardable under Idaho Code § 72-804.

9. Pursuant to Idaho Code § 72-718, this decision is final and conclusive as to all matters adjudicated.

DATED this 21ST day of AUGUST, 2008.

INDUSTRIAL COMMISSION

/S/_____

James F. Kile, Chairman

Participated but did not sign

R. D. Maynard, Commissioner

/S/_____

Thomas E. Limbaugh, Commissioner

ATTEST:

/S/_____

Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 21ST day of AUGUST, 2008 a true and correct copy of **FINDINGS, CONCLUSIONS, AND ORDER** were served by regular United States Mail upon each of the following:

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db

/S/_____

ORDER - 3